

LAW OFFICE OF

ELIZABETH EILENDER

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED

DOC #:

DATE FILED: 1/16/08

225 Broadway, 24<sup>th</sup> Floor  
NEW YORK, NEW YORK 10007

(212) 227-2174

January 16, 2008

# MEMO ENDORSED

## BY FAX

Hon. Colleen McMahon  
United States District Judge  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 640  
New York, New York 10007

Fax: 212-805-6326

Re: Spillen v. Guardian Life  
S.D.N.Y. Docket no. 08 CV 305 (CM)

Dear Judge McMahon,

I represent the plaintiff in the above-referenced matter, which was removed by the defendant from state court on January 14, 2008.

Although this action was commenced in state court last July, 2007, some six months ago, and thus we believe a good argument can be made that the removal was not timely, our primary interest is resolving this matter expeditiously, so we are electing not to get bogged down in a debate over remand.

On November 21, 2007 the state court judge who was then presiding over this case, Justice Charles E. Ramos of Supreme Court, New York County, issued a discovery scheduling order setting a swift schedule for this case pursuant to which all discovery was to be complete by February 29, 2008. A copy of that scheduling order is enclosed (Exhibit A) I am concerned that the defendant removed the case when it did in an effort to derail Justice Ramos' schedule, which had deadlines set for this week and next week. Removal should not be used as an artifice to gain extensions of a discovery schedule.

*1/15/2008*  
*Justice Ramos' schedule will be followed in this court. I will not send the deadline. I mean my 6 month discovery schedule. (the 1st) I mean 1 year. He says the suit with Phil is removed.*

*15 - defendant should refrain from arguing otherwise*

Hon. Colleen McMahon

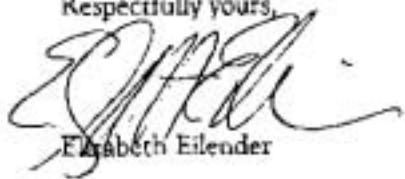
January 16, 2008

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Accordingly, plaintiff respectfully requests that the Court direct that Justice Ramos' discovery schedule be adhered to despite the removal of this action.

Respectfully yours,



Elizabeth Eilender

cc: Robert D. Meade, Esq. by fax (914) 683-6956

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION

MARTIN SPOLLEN PT

Plaintiff(s)

against

THE GUARDIAN LIFE INSURANCE CO  
Defendant(s)

Present:

Lamos

Justice

TAS

53

Index No.

602347/19

Standard  
PRELIMINARY CONFERENCE  
ORDER

APPEARANCES:

Plaintiff(s):

ELNATH ELENOR RT A JANS

Defendant(s):

B-GALBY PART - SCHMIDT

It is hereby ORDERED that disclosure shall proceed as follows:

(1) BILL OF PARTICULARS (See CPLR 3130(1)):

(a) Demand for a bill of particulars shall be served by \_\_\_\_\_ on or before \_\_\_\_\_

(b) Bill of particulars shall be served by \_\_\_\_\_ on or before \_\_\_\_\_

(2) DOCUMENT PRODUCTION:

(a) Demand for discovery and inspection shall be served by P-D on or before 12/7/07

(b) Response to demand shall be served by P-D on or before 1/11/08

Including Responses  
to Documents

All document requests limited to physical things and conditions which began in 4/49

(3) INTERROGATORIES:

(a) Interrogatories shall be served by all parties on or before 60 days before end of

(b) Answers to interrogatories shall be served by \_\_\_\_\_ on or before 30 days after

(4) DEPOSITION ON ORAL QUESTIONS:

shall be held

☐ Plaintiff(s)

☐ Defendant(s)

☒ All Parties

P

ON AT WITNESS WITH KNOWLEDGE AS TO THE REASONS FOR  
FOR A NOT PAYING IT ALLS ON

Notices and subpoenas to be served by 1/18/08



602347/07

(5) OTHER DISCLOSURE:

Δ TO PRODUCE COMPLETE FILE MATERIALS FOR DAVID  
DISCLOSURE INCLUDE FILE COMPUTER RECORDS & EMAILS  
~~WITHIN 10 DAYS OF SERVICE OF DISCOVERY~~  
OF MAKE AVAILABLE TO IT  
Δ TO PRODUCE RULES & RELATIONS WITH REGARD TO PROTECT  
OF CERTAIN FOR PHYSICAL TITAN 1- EFFECT

(6) If a motion relating to disclosure has raised additional disclosure issues, the parties shall:

646-386-3219

Call Chambers

by 12/7/07  
from  
2000 to present

(7) IMPLAIDER: Shall be completed on or before 30 days after last party up to

(8) END DATE FOR ALL DISCLOSURE: 2/29/08

(9) COMPLIANCE CONFERENCE: Shall be held on Jan 14, 2008 @ 430 PM in trials

(10) MOTIONS: Any dispositive motion(s) shall be made on or before 30 days after filing 12/16/07  
issue

(11) NOTE OF ISSUE: II shall file a note of issue/certificate of readiness on or before 2/29/08

A copy of this order shall be served and filed with the note of issue.

THE DATES SET FORTH HEREIN MAY NOT BE ADJOURNED EXCEPT WITH APPROVAL OF THE COURT

SO ORDERED:

Dated: 11/21/07

J.S.C.  
CHARLES E. RAMOS

ADDITIONAL DIRECTIVES

By 12/7/07  
In addition to the directives set forth above, it is further ORDERED as follows:

Δ SHIRAZ PRODUCE THE DOCUMENTS SUPPORTING A1 POSITION  
THAT THE POLICY OF INSURANCE WAS ISSUED  
PURSUANT TO POLICY 1-1/10 2000 of SERVICE of  
the authorization from Sacramento  
Δ TO PRODUCE DOCUMENTS IN REQUESTED - P1  
ARTICLE TO PRODUCE PAGES 3/12/07 by 12/7/07  
INCLUDE PRIVACY by 12/7/07  
By 12/8/07  
NON-PARTY ADVISOR UNABLE TO PRODUCE A21 FOR  
1) Detail from 2) On Record 3) On Service 4) A previous

All documents to be made on hand by date assigned

SO ORDERED:

Dated: 11/21/07

J.S.C.  
CHARLES E. RAMOS